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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

01900-22873

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on December 18, 2006

Signature

Typed or printed
name

Christopher L. Johnson

Application Number

10/660,212

Filed

September 11, 2003

First Named Inventor

Belcourt, et al.

Art Unit

3632

Examiner

Alfred J. Wujciak

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 46,809

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

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Telephone number

December 18, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.



*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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REASONED STATEMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

In the Office Action mailed August 16, 2006 (hereinafter, the “Office Action”), claims 1-4, 7-27, and 30-33 were finally rejected. Claims 1-4, 7-19, 21-27 and 30-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,782,442 to Kwak et al. (hereinafter, “Kwak”), and in view of U.S. Patent No. 6,607,340 to Petzl et al. (prior art from FIG. 2) (hereinafter, “Petzl”). Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kwak in view of Petzl (prior art from FIG. 2). In the following discussion Applicant has focused on specific aspects of the claimed invention which are clearly not taught or suggested by the cited references.

The Claimed Invention

As the application now stands, the Applicant is claiming various claims relating to an ice screw, a crank handle for use with an ice screw, and a method for correcting problems associated with the use of an ice screw. Each of the independent claims of the application comprise the limitation that *the flexing crank handle associated with the ice screw is configured to displace by flex from a resting position to a plurality of flexed positions in response to a load induced thereon, and to automatically return to the resting position without the need for manual manipulation.*

Rejection under 35 U.S.C. § 103(a) based on Kwak in view of Petzl, prior art FIG. 2

In the Office Action, the Examiner relies upon Kwak for many of the elements recited in the claims, but states that Kwak fails to teach the crank handle being configured to displace by flex from a resting position to a plurality of flexed positions and to automatically return to the resting position without the need for manual manipulation. See Office Action, pg. 3. This language was previously agreed upon as language that would overcome the Kwak reference. The Examiner then goes on to state in the Office Action that Petzl, and specifically figure 2 of Petzl, teaches the *crank handle (22-23)* being configured to displace by flex in any direction from a resting position to a plurality of flexed positions and to automatically return to the resting position without the need for manual manipulation. Id. at page 3 (emphasis added). Based on this the Examiner concludes that that it would have been obvious to modify Kwak’s crank handle with “flexible material” as taught by Petzl. Id. at page 3.

Applicant respectfully submits that the Examiner incorrectly indicates that the crank handle in Petzl is “crank handle (22-23)”, or in other words, the Examiner inaccurately combines what is the hanger 22 and the actual crank handle 23 and incorrectly calls this combination the “crank handle (22-23)” taught in Petzl. Rather, Applicant respectfully submits that Petzl discloses and teaches a hanger 22 *and* a crank handle 23 (which, incidentally, Petzl describes as being the crank handle disclosed in the Kwak reference). As explained to the Examiner in our interview of September 7, 2006, most, if not all ice screws comprise a hanger, or the equivalent, but all ice screws, however, do not comprise a crank handle. A crank handle is something entirely different than the hanger it is operable with. The crank handle comprises a separate and distinct element supported by the hanger. As such, the ice screw shown in prior art FIG. 2 of the Petzl reference, as can be seen, comprises both a hanger (which is referred to in Petzl as an attachment lug 18, with an extension 22) and a *crank handle* 23. There is no indication in Petzl, nor would there be, that the crank handle is a combination of both the attachment lug 18 with its extension 22 and the crank handle 23.

Applicant and the Examiner were unfortunately unable to agree on this point in the September 7, 2006 interview. This clear error is being set forth as it provides the basis for what Applicant considers as a deficiency in the prima facie case outlined by the Examiner in support of the rejection.

With respect to the prima facie case of obviousness set forth by the Examiner in the Office Action, Applicant respectfully submits that this is deficient for at least two reasons. First, as explained above, the “hanger” in Petzl cannot be considered part of the crank handle. The actual crank handle in Petzl prior art figure 2 comprises the same crank handle described in the Kwak reference. This is evidenced by the fact that the discussion in Petzl with respect to prior art figure 2 refers to the crank handle in the FR-A-2,758,992 patent (See Petzl col. 2, ln. 1-5), which is the French equivalent of the cited Kwak reference, which cited Kwak reference was previously overcome by Applicant in a previous response. As such, applicant submits that what is disclosed as the actual crank handle in Petzl does not render the claims of the present invention obvious.

Second, Petzl does not teach a crank handle having a “flexible material,” nor a crank handle being configured to displace by flex from a resting position to a plurality of

flexed positions and to automatically return to the resting position without the need for manual manipulation, this being the case even if the crank handle in Petzl prior art figure 2 were to be considered to consist of a combination of the hanger and the crank handle. In the Office Action, the Examiner states that because the “crank handle” (meaning both the hanger and the actual crank handle) in Petzl prior art figure 2 is comprised of a “flexible material” that it would have been obvious to modify the crank handle in Kwak to displace by flex from a resting position to a plurality of flexed positions and automatically return to the resting position without the need for manual manipulation. See Office Action, pg. 3. In our September 7, 2006 interview, the Examiner indicated that support for the “flexible material” language was obtained from the hanger (or what the Examiner would call the crank handle) in figure 2 forming a twisted configuration.

Applicant submits that the prima facie case of obviousness set forth by the Examiner is deficient as Petzl does not teach or suggest a crank handle having a “flexible material.” The fact that the crank handle in Petzl does not form any part of the crank handle, and the fact that the actual hanger is shown as comprising a twisted configuration, without more, cannot support a finding of obviousness. Indeed, without any indication otherwise, the hanger in Petzl very well could comprise metal or any other rigid and non-flexible material forged or formed in a twisted configuration.

In fact, Petzl provides good suggestion that the hanger is in fact rigid. See Petzl col. 1, ln. 8-47. Here, Petzl discusses the attachment lug 18 (or “hanger”), with its extension 22, being configured to receive into its hole 24 an ice-axe to enable the ice-axe to function as “leverage arm” to facilitate driving the rotation of the ice screw or peg 10 for inserting the ice peg into the ice. Applicant submits that if the hanger 18, with its extension 22, were formed of a flexible material, this would not be possible.

Based on the foregoing, Applicant submits that the prima facie case of obviousness is improper, and that Petzl does not teach a crank handle formed from a “flexible material.” There is nothing in Petzl that teaches or even suggests that the hanger is a “flexing” hanger, or one that comprises any degree of flex whatsoever. Likewise, there is nothing in Petzl that teaches or suggests that the crank handle is a “flexing” crank handle, or one that comprises any degree of flex. The focus of the Examiner, in citing the prior art figure 2 in the Petzl reference, is improperly on what is

the equivalent of a hanger in the present invention application. Indeed, the present invention claims a flexing crank handle, not a crank handle that can move with a supposedly flexing or flexible hanger.

As there is no teaching or suggestion in the Petzl reference of a flexing crank handle, or a flexing hanger for that matter, applicant respectfully submits that one skilled in the art would not find it obvious to modify the crank handle in Kwak with the crank handle in Petzl to arrive at the claims of the present invention. This combination clearly fails to teach each and every element of the claimed invention and cannot establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests that the rejections be withdrawn and that the claims be passed to issue.

CONCLUSION

In view of the foregoing, Applicant believes that the present rejections are unsustainable and should be withdrawn. Therefore, Applicant respectfully requests that the claims be allowed. If any impediment to the allowance of these claims remains after consideration of the above remarks, and such impediment could be resolved during a telephone interview, the Examiner is invited to telephone the undersigned attorney to address such issues as expeditiously as possible.

DATED this 18th day of December, 2006.

Respectfully submitted,

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